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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,071	01/08/2002	Marc Michael Groz	MMG-002U	4941

7590 10/28/2004

MPA LLC
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STAMFORD, CT 06906

EXAMINER


ONEILL, MICHAEL W

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/043,071	Applicant(s) GROZ, MARC MICHAEL 	
	Examiner Michael O'Neill	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-19 and 33-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-19 and 33-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

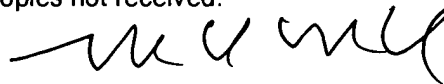
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



MICHAEL O'NEILL
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-25-04</u></p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|---|--|

DETAILED ACTION

The drawings were received on 6-23-04. These drawings are approved.

Election/Restrictions

The election of Species I "return enhancement module", claims 6-19 and 33-41 is acknowledge. Election was made **without** traverse in the reply filed on 6-23-04 and it is noted that the Applicant has canceled the claims drawn to the non-elected species.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6, 8, 10, 11, 13-19, and 33-41 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Jenkins, USPubNo. 2003/0104857.

What Jenkins discloses is exactly the same as what the Applicant discloses, abet in different terminology. Jenkins discloses a lottery system wherein the player wagers \$2.00, the financial consideration, one dollar goes to the jackpot of the lottery and the player receives a lottery ticket or script or

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electronic acknowledgement. The other dollar goes into an investment account of graded securities and bonds, the asset. As disclosed the residual value is 50% which is exactly the same residual value the Applicant has disclosed in the examples within the Applicant's specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6-19 and 33-41 rejected under 35 U.S.C. 103(a) as being unpatentable over the personal choice of a human being.

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If the instant Examiner had \$500.00 in his possession, the Examiner could choose how to use the money. The instant Examiner could spend \$250.00 on purchasing lottery tickets and the other \$250.00 could be deposited in certificate of deposit. In other words, claiming personal choice with respect to what a person can do with his or her money is obvious to one of ordinary skill in the art.

Claims 7, 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins, USPubNo. 2003/0104857.

It is an obvious design choice left to the inventor's discretion to allow the player to choose which assets to be purchased. In the case of Jenkins, the system could be easily modified to allow the player to select from a plurality of graded securities and bonds. Because the purpose of Jenkins is to have the player a guarantee of a "win" and player would select the which securities or bonds provide the greatest yield per the term of the security or bond.

It is an obvious design choice left to the inventor's discretion to allow the player to choose how much of the wager goes to the jackpot and how much goes to the investment account. In the case of Jenkins, it is disclosed that 50% goes to the jackpot and 50% goes to the investment account. However, one skilled in the art would deem it wise to have these values

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adjustable within a range in order to meet the needs of many players. Some player might be conservative and only want less than 50% going to the jackpot; while others might be more aggressive. The choice is a matter of personal preferences and behavior on the part of the player.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael O'Neill whose telephone number is 703-308-3484. The examiner can normally be reached on Monday through Friday 8:30 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 703-308-2064. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL O'NEILL
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